

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>ANTHONY VOLPACCHIO</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	<b>NO. 03-2161</b>
	:	
<b>THE BUDD-UAW CONSOLIDATED</b>	:	
<b>RETIREMENT BENEFIT PLAN, <u>et al.</u></b>	:	

**MEMORANDUM AND ORDER**

**Kauffman, J.**

**November 22 , 2004**

Plaintiff Anthony Volpacchio brings this action against the Budd-UAW Consolidated Retirement Benefit Plan, the Budd Company and the National Retirement Board of Administration to challenge the denial of employee early retirement benefits under the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq. (“ERISA”). Both Plaintiff and Defendants have submitted Motions for Summary Judgment. For the reasons that follow, this Court will grant Defendants’ Motion and deny Plaintiff’s Motion.

**I. Background**

The basic facts are not in dispute. Plaintiff began work with the Budd Company at its Hunting Park Plant in October of 1970. Plaintiff’s Motion for Summary Judgment (“Plaintiff’s Motion”) at 1; Defendants’ Motion for Summary Judgment (“Defendants’ Motion”) at 4. In early December 1975, Plaintiff began work at the Red Lion Plant (also owned by the Budd Company and later operated by Transit America Inc.). Defendants’ Motion at 4. On March 27, 1987, Plaintiff was laid off from the Red Lion Plant. Plaintiff’s Motion at 1.

As a union member during his time with the Budd Company, Plaintiff was covered by the

Budd-UAW Consolidated Retirement Benefit Plan (“the Plan”), which is a defined benefit plan under ERISA. Plaintiff’s Motion at 1. The Plan is sponsored by the Budd Company and administered by the National Retirement Board of Administration (“National Board”). Id. As part of its benefits package, the Plan provides for a “Mutual Consent Early Retirement.” To be eligible, the Plan requires that an employee: (1) have achieved “seniority status” with the Company by age 55; (2) have completed at least 10 years of “Credited Service” with the Company; and, (3) have been laid off at age 40 or older as a result of a plant closing. See Plaintiff’s Motion at 2-3; Defendants’ Motion at 3.<sup>1</sup> At the time he was laid off, Plaintiff had over 10 years of “Credited Service” and was 42 years old. Plaintiff’s Motion at 3. The only issue before this Court is whether Plaintiff had achieved “seniority status” within the meaning of the Plan.

After his release from the Red Lion Plant, Plaintiff first directed inquiries regarding his eligibility for Mutual Consent Early Retirement benefits to the Budd Company in March of 2000.<sup>2</sup> See Affidavit of Anthony Volpacchio, attached as Exhibit G to Plaintiff’s Motion. Despite notification from the Company that he would not be eligible for such benefits, Plaintiff formally applied to the Local Board on January 25, 2002. See Application for Benefits, attached as Exhibit I to Plaintiff’s Motion. On February 7, 2002, the Local Board denied his claim, stating

---

<sup>1</sup> Since Plaintiff’s release from employment in 1987, the benefits Plan has been amended several times. While Plaintiff relies on an older version of the Plan, Defendants argue that this Court should consider a more recently amended version. In any event, the Mutual Consent Early Retirement eligibility requirements, as applied to Plaintiff, have not changed.

<sup>2</sup> Plaintiff does not explain the delay until March of 2000 to inquire about these benefits. Nevertheless, there is no statute of limitations issue because an action under ERISA does not accrue until benefits are formally denied. See, e.g., Tinley v. Gannet Co., Inc., 55 Fed. Appx. 74, 78 (3d Cir. 2003).

“[e]mployee does not qualify for mutual consent retirement in terms of necessary age and/or Company service.” Id. Plaintiff’s appeal to the Local Board was denied on July 16, 2003 for the same reason. The Board concluded that Plaintiff did not have the “age and service criteria required to be eligible for the [Mutual Consent Benefit].” See Minutes of Red Lion Local Retirement Board, attached as Exhibit L to Defendants’ Motion. Finally, on July 16, 2003, Plaintiff’s appeal was unanimously denied by the National Board because his age, in combination with his seniority, was not sufficient to entitle him to the Mutual Consent Early Retirement benefits. See Minutes of National Board of Administration, attached as Exhibit N to Defendants’ Motion.

Plaintiff brings this action under 29 U.S.C. § 1132, challenging the denial of benefits. This Court has jurisdiction pursuant to 29 U.S.C. § 1001 et seq. As stated, both Plaintiff and Defendants have moved for summary judgment.

## **II. Legal Standard for Summary Judgment**

In deciding a motion for summary judgment, “the test is whether there is a genuine issue of material fact and, if not, whether the moving party is entitled to judgment as a matter of law.” Med. Protective Co. v. Watkins, 198 F.3d 100, 103 (3d Cir. 1999) (quoting Armbruster v. Unisys Corp., 32 F.3d 768, 777 (3d Cir. 1994)); Fed. R. Civ. P. 56. “Summary judgment will not lie if the dispute about a material fact is ‘genuine,’ that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). The Court must examine the evidence in the light most favorable to the non-moving party and resolve all reasonable inferences in that party’s favor. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). However, “there can be ‘no genuine issue as to

any material fact’ ... [if the non-moving party’s] complete failure of proof concerning an essential element... necessarily renders all other facts immaterial.” Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

### **III. Applicable Standard for Judicial Review of Denial of Benefits**

The initial issue before this Court is the standard of review in evaluating the administrator’s denial of benefits under the ERISA Plan. District courts conduct a de novo review of the denial of benefits “unless the plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan.” Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989); see also Pinto v. Reliance Standard Life Ins. Co., 214 F.3d 377, 382-83 (3d Cir. 2000). If such discretionary authority is expressly or impliedly reserved, courts evaluate administrative decisions under the more deferential arbitrary and capricious standard. See Luby v. Teamsters Health, Welfare & Pension Trust Funds, 944 F.2d 1176, 1180 (3d Cir. 1991).

In order to determine if such discretionary authority has been reserved in this case, the Court must first decide which version of the Plan to consider. Plaintiff has submitted a version of the Plan effective on March 25, 1985. See The Budd Company Consolidated Office Retirement Benefit Plan (hereinafter “1985 Plan”), attached as Exhibit F to Plaintiff’s Motion. Defendants argue that this Court should consider the language of the most updated plan, effective February 26, 2001. See The Budd-UAW Consolidated Retirement Benefit Plan (hereinafter “2001 Plan”), attached as Exhibit B to Defendants’ Motion. In this Circuit, the question of an administrator’s authority is determined by the plan in effect when the administrator exercises that authority, rather than when a plaintiff first becomes eligible for or seeks benefits. See Smathers

v. Multi-Tool/Multi-Plastics, Inc. Employee Health & Welfare Plan, 298 F.3d 191, 196 (3d Cir. 2002) (evaluating administrator's authority to interpret plan according to amended plan in effect when decision to deny benefits was made). In this case, Plaintiff officially applied for and was denied benefits by the Local Board in January and February of 2002. Plaintiff appealed the denial of benefits and, in July 2003, the denial was affirmed by the National Board. Accordingly, this Court will apply the language of the 2001 Plan:

The National Board shall have full power, authority and sole discretion to administer the Plan and to interpret its provisions. Any decision or interpretation of the provisions of the Plan shall be final and binding...and shall be given full force and effect, subject only to an arbitrary and capricious standard of review.

2001 Plan § 9.15. This unambiguous language was clearly intended to reserve discretionary authority to the Board. See, e.g., Stout v. Bethlehem Steel Corp., 957 F. Supp. 673, 690 (E.D. Pa. 1997) (finding similarly explicit language to signal appropriateness of arbitrary and capricious review). Thus, in order to succeed on his summary judgment motion, Plaintiff must show that the action of the Board was arbitrary and capricious. See, e.g., id.; Roberts v. Carpenters' Local Union No. 600 Sick & Welfare Fund, 1994 WL 37737, at \*3 (E.D. Pa. Feb. 2, 1994).<sup>3</sup>

#### **IV. Motions for Summary Judgment**

Plaintiff's case turns on the interpretation of § 7.1C of the Plan, concerning eligibility for Mutual Consent Early Retirement.<sup>4</sup> See Plan 2001 at 46. Both parties concede that the eligibility

---

<sup>3</sup> Furthermore, there is no evidence of a conflict of interest, which would require a higher level of review by this Court. Cf. Pinto, 214 F.3d at 378-79 (exercising more stringent review where company sponsors and administers benefits plan).

<sup>4</sup> That section reads in relevant part: "An Employee who has seniority status with the Company and who on and after December 1, 1958 has attained his 60th birthday but not his

for Mutual Consent Retirement benefits is determined by the age, “Credited Service,” and seniority status of an employee. In addition, both parties agree that the only question here is whether Plaintiff has sufficient “seniority” with the Company to qualify for the benefit. See Plaintiff’s Motion at 3; Defendants’ Motion at 8. Plaintiff contends that the wording of the Plan requires that his seniority be measured according to the total number of years he was employed by the Budd Company. Conversely, Defendants argue that seniority status is determined according to the number of years an individual has been with a particular plant. The difference is crucial because Plaintiff would apparently qualify for the benefit if his seniority were calculated from his first date of hire with the Budd Company, but would not qualify if his seniority dates from his hire at the Red Lion Plant specifically. Both the Local and National Board determined that “seniority status” depended on the date of an employee’s hire at a particular plant, thereby denying Plaintiff’s claim. See Application for Benefits, attached as Exhibit K to Defendants’ Motion; Affidavits of National Board Members, attached as Exhibits O-R to Defendants’ Motion.

“Seniority status” is not specifically defined in the Plan. Because the term is ambiguous, the Court must analyze whether the administrator’s interpretation meets the arbitrary and capricious standard. See, e.g., Estate of Baird v. Teamsters Affiliates Pension Plan, 317 F. Supp. 2d 588, 594-95 (W.D. Pa. 2004). Courts in this district have employed different formulations for evaluating the reasonableness of administrative action under the arbitrary and capricious

---

65th birthday, or on and after March 1, 1965 has attained his 55th birthday, but not his 65th birthday, and who has completed at least 10 years of Credited Service with the Company may be retired by mutual consent of the Company and the Employee with an unreduced basic retirement benefit plus a special temporary benefit.”

standard. The Third Circuit has stated that an administrator's decision will be considered arbitrary and capricious only if it is "without reason, unsupported by substantial evidence or erroneous as a matter of law." Pinto, 214 F.3d at 387. In gauging reasonableness in the ERISA context, courts have looked to several factors, including: (1) whether the administrator's interpretation is consistent with the goals of the plan and, more broadly, with the substantive and procedural requirements of ERISA; (2) whether the interpretation accords with the plain language of the plan; and, (3) whether the provision at issue has been consistently interpreted. Compare Moench v. Robertson, 62 F.3d 553, 566 (3d Cir. 1995) (applying factors in context of ERISA breach of fiduciary duty cases); see also Doyle v. Nationwide Cos. & Affiliates Employee Health Care Plan, 240 F. Supp. 2d 328, 347 (E.D. Pa. 2003); Johnson v. Lucent Technologies, Inc., 2001 WL 527806, at \*2 n.1 (E.D. Pa. May 15, 2001). Courts have emphasized that not every factor will be equally significant in every case. See, e.g., Holmes v. Pension Plan of Bethlehem Steel Corp., 2004 WL 633007, at \*9 (E.D. Pa. May 5, 2000).

Here, the administrator's decision was clearly reasonable in light of these factors. First, an accurate determination of benefits eligibility accords with the Plan's overarching goal of providing for and assisting eligible employees and there is no indication of a substantive or procedural conflict with the requirements of ERISA.

Second, this interpretation is in line with the plain language of the Plan. Plaintiff argues that the language of the Plan supports his interpretation because it references "seniority with the Company," and then defines "Company" to include all plants associated with the Budd Company more broadly. However, in analyzing the language of the Plan, the specific question before this Court is the definition of "seniority," and the related question of whether "plant seniority" is

inherent in that term, as the Board decided. Although “seniority” is not specifically defined within the Plan, it is clearly distinguished from other concepts such as “Credited Service,” which are based on time with the overall Company. See 2001 Plan at 7, 13, 46. Thus, there is sufficient evidence in the text of the Plan to support the Board’s reading.

Finally, Defendants have presented uncontested evidence that their interpretation of the Plan has been consistently applied. According to Company records, all employees receiving early retirement benefits under the Plan had sufficient seniority in terms of years with a particular plant, and not merely in terms of years with the Company. See Record, attached as Exhibit Y to Defendants’ Motion. Indeed, as Defendants demonstrate, the term “seniority” is widely understood to involve seniority at a particular plant only. The closing Agreement between Transit America Inc. and its employees, related to the Red Lion Plant shut-down, clearly references seniority at a particular plant. See Agreement ¶ 2, attached as Exhibit D to Defendants’ Motion. According to Company records, Plaintiff’s recorded “seniority” date is December 9, 1975– the day he started with the Red Lion Plant specifically. See Red Lion Plant Seniority Sequence at 14, attached as Exhibit U to Defendants’ Motion. Furthermore, the Collective Bargaining Agreement between the Budd Company, Red Lion Plant and the UAW repeatedly references “seniority” in terms of work experience or time at a particular plant. See Collective Bargaining Agreement at 18-19, attached as Exhibit V to Defendants’ Motion. Finally, this definition of “seniority” has been consistently offered by the Company, Local and National Boards from the date Plaintiff first inquired about benefits, thereby dispelling any concerns that this is merely a post hoc rationalization offered for the purposes of litigation. In sum, there is ample support for the Board’s conclusion that “seniority” depends on plant, not



company wide, service and that this interpretation of the term has been consistently applied.

Because there is sufficient evidence to support the Board's reading, this Court must not substitute its own independent judgment for the reasonable judgment of the Plan's administrator.

## **V. Conclusion**

The Court concludes that there is no issue of material fact regarding the reasonableness of the Board's interpretation of the Plan. Accordingly, Defendants are entitled to judgment as a matter of law.<sup>5</sup>

---

<sup>5</sup> Given this decision, the Court need not reach the question of whether the Budd Company is a proper defendant in this case.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>ANTHONY VOLPACCHIO</b>	<b>:</b>	<b>CIVIL ACTION</b>
	<b>:</b>	
<b>v.</b>	<b>:</b>	<b>NO. 03-2161</b>
	<b>:</b>	
<b>THE BUDD-UAW CONSOLIDATED</b>	<b>:</b>	
<b>RETIREMENT BENEFIT PLAN, <u>et al.</u></b>	<b>:</b>	

**ORDER**

**AND NOW**, this            day of November, 2004, upon consideration of Plaintiff's Motion for Summary Judgment (docket no. 8), Defendants' Motion for Summary Judgment (docket no. 10), and the responses thereto, it is **ORDERED** that:

1. Defendants' Motion for Summary Judgment is **GRANTED**. Accordingly, judgment is entered in favor of Defendants and against Plaintiff.
2. Plaintiff's Motion for Summary Judgment is **DENIED**.

**BY THE COURT:**

**S/Bruce W. Kauffman**  
**BRUCE W. KAUFFMAN, J.**